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8                   UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA  
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10       TONY J JACKSON,

11                   Plaintiff,

12               v.

13       RYAN LARSON, LAKEWOOD POLICE  
DEPT, CITY OF LAKEWOOD,  
LAKEWOOD TOWING, HOMELAND  
SECURITY INVESTIGATIONS,

14                   Defendants.  
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CASE NO. 3:15-CV-05258-RJB-JRC  
REPORT AND RECOMMENDATION  
NOTED FOR: August 14, 2015

17       The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States  
18 Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §  
19 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

20       Before the Court is plaintiff's motion for default judgment against defendant Lakewood  
21 Police Department. Dkt. 10. Defendant Lakewood Police Department filed a response alleging  
22 that defendant is not a legal entity and, therefore, has never been served with plaintiff's  
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1 complaint. Dkt. 18. The Court recommends denying plaintiff's motion as the Court's file shows  
 2 that defendant Lakewood Police Department was not properly served.

3 Federal Rule of Civil Procedure 55, which governs the entry of default, gives plaintiff the  
 4 ability to move for default judgment if a defendant fails to plead or otherwise defend in a civil  
 5 action. Fed. R. Civ. P. 55. However, where a defendant has not been properly served, he does  
 6 not yet have a duty to plead, and entry of default is inappropriate. *Williams v. Kushner*, 2011 WL  
 7 1045092, at \*1 (N.D. Cal. Mar. 23, 2011) (citing *Fisher v. Lynch*, 531 F.Supp.2d 1253, 1269 n.  
 8 12 (D. Kan. 2008)). A party's duty to file a responsive pleading to a complaint under Rule 12 is  
 9 triggered only upon sufficient service of process. See *Worrell v. B.F. Goodrich Co.*, 845 F.2d  
 10 840, 841-42 (9th Cir. 1988).

11 Here, plaintiff was granted leave to proceed *in forma pauperis* (Dkt. 3) and filed a  
 12 complaint on May 4, 2015 (Dkt. 4). Plaintiff did not supply service addresses for the five named  
 13 defendants: Lakewood Police Department, Ryan Larson, City of Lakewood, Lakewood Towing,  
 14 and Homeland Security Investigations. The Clerk's Office attempted to locate the proper service  
 15 addresses for each defendant and mailed them the complaint and waivers of service forms. See  
 16 Dkt. 5. However, the Clerk's Office is not responsible for verifying an appropriate service  
 17 address for any of the defendants.

18 Defendants Ryan Larson and the City of Lakewood returned waivers of service (Dkt. 8)  
 19 and filed an answer (Dkt. 12). Defendant Lakewood Towing filed an answer (Dkt. 16).  
 20 Defendants Lakewood Police Department and Homeland Security Investigations failed to timely  
 21 return the signed waiver of service and have not filed an answer.

22 On June 15, 2015, plaintiff filed three motions for default judgment. Dkts. 9, 10, 11.  
 23 Defendant Lakewood Police Department filed a response on June 19, 2015 alleging that  
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1 defendant was not a legal entity and had not been properly served with plaintiff's complaint. Dkt.  
2 18. The Court entered an order on June 24, 2015 directing plaintiff to provide the complete  
3 addresses for defendants Lakewood Police Department and Homeland Security Investigations by  
4 July 24, 2015 so that the Court could again attempt service by mail. Dkt. 19.

5 Plaintiff has not provided the Court with an address of defendant Lakewood Police  
6 Department and defendant has not yet been served with plaintiff's complaint. Without sufficient  
7 service, defendant Lakewood Police Department's duty to plead and respond to plaintiff's  
8 complaint has not been triggered. *See Williams*, 2011 WL 1045092 at \*1. Accordingly, as  
9 defendant Lakewood Police Department has not yet been properly served, the Court recommends  
10 that plaintiff's motion for default judgment be denied.

11 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
12 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
13 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
14 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
15 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
16 August 14, 2015, as noted in the caption.

17 Dated this 20<sup>th</sup> day of July, 2015.

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20 J. Richard Creatura  
United States Magistrate Judge  
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